



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201152023

COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.03-00

OCT 5 2011

T:EP:RA:T3

Legend:

Taxpayer A:

IRA X:

Financial Institution Y:

Financial Institution Z:

Month 1:

Month 2:

Month 3:

Amount M:

Date 1:

Date 2:

Date 3:

Date 4:

Investment Advisor K:

Investment Advisor C:

Limited Liability Corporation C:

Dear :

This is in response to your request dated March 7, 2011, submitted on your behalf by your authorized representative, in which you request a ruling to waive

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the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A maintained an Individual Retirement Annuity (IRA), IRA X with Financial Institution Y. Taxpayer A, age 68, asserts that on Date 1, he received a distribution of Amount M from IRA X and that his failure to accomplish a rollover of Amount M within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error by Investment Advisor K. Taxpayer A further represents that Amount M has not been used for any other purpose.

Taxpayer A represents that he had developed a reliance on the investment advice of Investment Advisor K over a period of several years. In Month 1, Investment Advisor K advised Taxpayer A to cash out IRA X and invest in trust deeds secured by real property which would earn 8.5 percent annually and which would be 100 percent secure. Investment Advisor K informed Taxpayer A that time was of the essence and on Date 1 had Taxpayer A sign a blank form to surrender IRA X. Investment Advisor K then told Taxpayer A that he would fill out the rest of the form. Taxpayer A was directed to open an IRA account at Financial Institution Z to hold the trust deeds, and Financial Advisor K requested a check from Taxpayer A's joint checking account to open the IRA. This check never cleared Taxpayer A's account. Investment Advisor K or someone at his firm completed the surrender form directing that Amount M be sent to Taxpayer A's joint checking account, a non-IRA account instead of the new IRA account.

On Date 2, the funds from the surrendered IRA X were transferred to Taxpayer A's joint checking account. Investment Advisor K then asked Taxpayer A to wire the transferred funds to Limited Liability Corporation C to fund the purchase of the trust deeds for the new IRA. Taxpayer A transferred these funds on Date 3.

Several weeks went by and Taxpayer A had not received written confirmation that the trust deeds were purchased. Taxpayer A inquired on the status of the deeds but Investment Advisor K was evasive and did not provide copies of the trust deeds or any other documentation evidencing that the trust deeds had been purchased.

In Month 2, Investment Advisor K admitted to Taxpayer A that an employee of Limited Liability Corporation C erred and that the transfer of the funds from the surrender of IRA X into Taxpayer A's joint checking account could render him liable for taxes on the entire net surrender amount. Investment Advisor K told Taxpayer A that if the funds had been returned to IRA X within 60 days that the situation would have been curable, but given the belated discovery of the issue, it

was not curable. Investment Advisor K indicated that he had the trust deeds and they would be provided to Taxpayer A shortly.

Taxpayer A represents that after learning of this error, he periodically attempted to get written confirmation that the trust deeds were purchased. Taxpayer A met with Investment Advisor K in Month 3, and, in the meeting, Investment Advisor K intimated that the funds had not been used to secure trust deeds for Taxpayer A's IRA. Investment Advisor K assured Taxpayer A that the funds would be available by the end of the month.

Taxpayer A represents that he pursued the return of the transferred funds from Investment Advisor K, however Investment Advisor K did not cooperate and, in fact, issued to Taxpayer A a check purporting to refund the transferred funds, which did not clear due to insufficient funds. Taxpayer A did receive a partial return of Amount M after terminating his relationship with Investment Advisor K and by working with a new representative within the firm, Investment Advisor C. Taxpayer A further represents that they hired securities counsel to assist in the return of the remaining funds and months later, after extensive prolonged discussions, on Date 4, Taxpayer A received the remaining funds owed to complete the return of Amount M.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount M.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into

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such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that the failure to accomplish a rollover of Amount M within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error by Investment Advisor K.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount M from IRA X. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days from the date of the issuance of this letter ruling to make a rollover contribution of Amount M to a rollover IRA. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount M will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions, please contact

Sincerely yours,

for *Ada Perry*
Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose

cc: